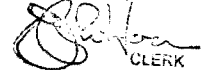


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
JAN 04 2009

CLERK

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

SOUTHY THEPMONTRY,

Defendant.

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CR 03-30103-01

ORDER DENYING
CERTIFICATE OF APPEALABILITY

TO THE EIGHTH CIRCUIT COURT OF APPEALS:

Defendant was convicted of conspiracy to distribute methamphetamine and was sentenced on June 27, 2005, to 200 months imprisonment. The United States Court of Appeals for the Eighth Circuit affirmed on September 14, 2006. United States v. Thepmontry, 2006 WL 2620642 (8th Cir. 2006). He filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, contending that he had received ineffective assistance of counsel.

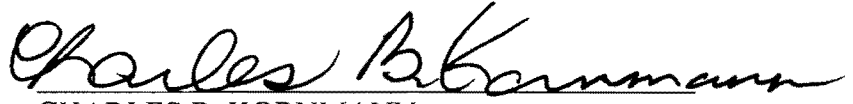
Claims that counsel was ineffective in failing to obtain the services of an interpreter, in arguing sentencing issues before me, and in arguing sentencing issues on appeal were dismissed upon initial review. Defendant's claim that counsel provided ineffective assistance in advising defendant of his options with respect to pleading guilty or proceeding to trial was submitted to a U.S. Magistrate Judge. The magistrate judge appointed counsel, conducted an evidentiary hearing, and submitted his report and recommendations, recommending that the motion to vacate be denied. I adopted the report and recommendation and denied the motion to vacate.

Defendant has filed a notice of appeal. The notice of appeal may be treated as an application for a certificate of appealability. Tiedeman v. Benson, 122 F.3d 518 (8th Cir. 1997). Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. Defendant did not and has not made a substantial showing of the denial of a constitutional right.

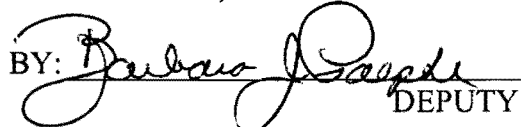
IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying defendant's § 2255 motion. Defendant's application for a certificate of appealability is denied. This in no way hampers the defendant's ability to request issuance of the certificate by a circuit judge pursuant to Fed. R. App. P. 22.

Dated this 5th day of January, 2010.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
(SEAL) DEPUTY